



DECISION

NUMBER 24/PUU-V/2007

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level has passed a decision in a case of petition for Judicial Review of Law Number 20 Year 2003 regarding National Education System and Law Number 18 Year 2006 regarding State Revenues and Expenditures Budget of Budget Year 2007, against the 1945 Constitution of the State of the Republic of Indonesia, respectively filed by:

[1.2] 1. **Dra. Hj. Rahmatiah Abbas**, Teacher, having her address at Jalan Asoka Number 175 Sengkang, Wajo Regency, South Sulawesi Province.

Hereinafter referred to as **Petitioner I**;

2. **Prof. Dr. Badryah Rifai, S.H.**, Lecturer at the Law Faculty of Hasanuddin University, having her address at Jalan Adyaksa Number 20 Makassar South Sulawesi Province;

Hereinafter referred to as **Petitioner II**;

In this case authorizing Hj. Elza Syarief, S.H., M.H., H.M.Ali Abbas, S.H., H.Aasmaun Abbas, S.H., M.H., Zujan Marfa, S.H., Triharso Utomo, S.H., M.Kn., Syamsul Huda, S.H., Suniati, S.H based on the Special Power of Attorney dated August 31' 2007. All of them are Advocates/Legal Counsels domiciled at Jalan Kramat Sentiong Number 38A, Central Jakarta, at Jalan Sri Sultan Hamengkubuwono IX, Taman Modern (Jalan Teratai I) Blok I/4 Number 32, Cakung, East Jakarta, 13960, in this case acting individually or jointly.

Hereinafter referred to as **the Petitioners**;

[1.3] Having read the Petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the written statement of the Government;

Having heard and read the written statement of the People's Legislative Assembly of the Republic of Indonesia;

Having heard and read the written statement of the directly Related Parties;

Having heard and read the written statements of the Experts presented by the Petitioners;

Having read the conclusion of the Petitioners;

Having examined the evidence of the Petitioners;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the *a quo* petition of the Petitioners are as described above;

[3.2] Considering whereas prior to examining the substance or the Principal Issue of the *a quo* Petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear and decide upon the *a quo* petition;
2. Whether the Petitioners have the legal standing to qualify as the petitioners before the Court in the *a quo* petition;

With respect to the aforementioned two matters, the Court is of the following opinion:

Authority of the Court

[3.3] Considering whereas the *a quo* petition is concerned with the judicial review of Law, *in casu* Article 49 Paragraph (1) of Law Number 20 Year 2003 regarding National Education System (hereinafter referred to as the National Education System Law) and Law Number 18 Year 2006 regarding State Revenues and Expenditures Budget of Budget Year 2007 (hereinafter referred to as the 2007 APBN Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.4] Considering whereas regarding the authority of the Court, Article 24C Paragraph (1) of the 1945 Constitution states, among other things, that the Court has the authority to adjudicate at the first and final level, the decision of which shall be final, to conduct judicial review of laws against the 1945 Constitution. The abovementioned provision is reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of Law Number 24 Year 2003 regarding the Constitutional (hereinafter referred to as the Constitutional Court Law).

[3.5] Considering whereas the object of petition filed by the *a quo* Petitioners shall be the judicial review of a Law, *in casu* Article 49 Paragraph (1) of the National Education System Law which was enacted on July 8, 2003, against the 1945 Constitution. Therefore, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

Legal Standing of the Petitioners

[3.6] Considering whereas to be able to file a petition for judicial review of a law against the 1945 Constitution, Article 51 Paragraph (1) of the Constitutional Court Law provides that parties which may file a petition for judicial review against the 1945 Constitution shall be (a) individual Indonesian citizens, (b) units of customary law community insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law, (c) public or private legal entities, or (d) state institutions. In this respect, the Petitioners are

individual Indonesian citizens so that they have met the criteria or qualification as provided for in Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law;

[3.7] Considering, whereas furthermore, in a petition for judicial review of Law against the 1945 Constitution, for a person or a party's legal standing to qualify as the Petitioner before the Court, Article 51 Paragraph (1) of the Constitutional Court Law stipulates, "*the Petitioner shall be the party who deems that his/her/its constitutional rights and/or authorities have been impaired by the coming into effect of a Law, namely:*

- a. *individual Indonesian citizens;*
- b. *units of customary law community insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law;*
- c. *public or private legal entities; or*
- d. *state institutions "*.

Meanwhile, the Elucidation of Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law affirms that what is referred to as "individual" in Article 51 Paragraph (1) Sub-Paragraph a shall include a group of people having a common interest;

[3.8] Considering whereas therefore, in order that a particular person or party can qualify as a Petitioner in a case of judicial review of Law against the

1945 Constitution, according to Article 51 Paragraph (1) of the Constitutional Court Law, the intended person or party must explain:

- a his/her/its the qualification in the petition, namely whether as an individual Indonesian citizen, unit of customary law community, legal entity, or state institution;
- b the impairment of his/her/its constitutional rights and/or authority, in the qualification as intended in the preceding item a, as a result of the coming into effect of the law petitioned for review;

[3.9] Considering also, since the Court Decision Number 006/PUU-III/2005 up to now, it has become the stand of the Court that in order to establish the existence of the impairment of constitutional rights and/or authority, the following requirements must be fulfilled:

- a. the Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;
- b. such constitutional rights and/or authorities are deemed by the Petitioners to have been impaired by the coming into effect of the law petitioned for review;
- c. such constitutional impairment of the Petitioner shall be specific and actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. there is a causal relationship (*causal verband*) between the impairment concerned and the coming into effect of the law petitioned for review;

- e. If the petition is granted, it is expected that the constitutional impairment concerned will not or does not occur any longer.

[3.10] Considering whereas the Petitioners argue about the constitutional rights impaired by the coming into effect of the *a quo* Law shall be in the Petitioners' qualification as individual Indonesian citizens. Meanwhile, the Elucidation of Article 51 Paragraph (1) of the Constitutional Court Law states that what are referred to as "constitutional rights" shall be the rights regulated in the 1945 Constitution. Therefore, the assessment to determine whether or not there is constitutional rights impairment on the part of the Petitioners, as required for establishing the legal standing of the Petitioners, must be based on the definition set forth in the intended elucidation of Article 51 Paragraph (1) of the Constitutional Court Law;

[3.11] Considering whereas in their petition the Petitioners argue that teachers and lecturers are the educators who become the education components in the national education system according to the National Education System Law. The 1945 Constitution and the National Education System Law have stipulated the budget for education amounting to 20% of APBN/APBD, but according to the Petitioners, the increase in the budget does not give benefit to teachers and lecturers as the education components due to the provision of Article 49 Paragraph (1) of the National Education System Law that excludes "educators' salary" from the budget of 20% of APBN/APBD, so that the

intended exclusion impairs the Petitioners' constitutional rights. Therefore, the Petitioners argue that they have the legal standing to file a petition for judicial review of Article 49 Paragraph (1) of the National Education System Law against Article 31 Paragraph (4) of the 1945 Constitution;

[3.12] Considering whereas by considering the petition's description and the statement of the Petitioners in the court as described above in relation to the requirements for the legal standing stipulated in Article 51 Paragraph (1) of the Constitutional Court Law and the requirements of constitutional rights impairment that have become the stand of the Court until now, the Court argues that the petitioners have obviously fulfilled the requirements as intended in Article 51 Paragraph (1) of the Constitutional Court Law and the requirements of constitutional rights impairment concerned. Therefore, the Petitioners have the legal standing to act as the Petitioners in the *a quo* petition, so that the Court must consider the principal issue of the petition.

Principal Issue of the Petition

[3.13] Considering whereas the Petitioners through both their petition and arguments in the hearing have explained the arguments on the unconstitutionality of the provisions of the National Education System Law and the 2007 APBN Law, as completely described in the facts of the case part of this decision, which are principally as follows:

- Whereas as individual Indonesian citizens who work as a teacher and a lecturer, the constitutional rights of the petitioners as stated in Article 31 Paragraph (4) of the 1945 Constitution are really impaired by the coming into effect of the National Education System Law and the 2007 APBN Law, especially related to the provision set forth in Article 49 Paragraph (1) of the National Education System Law;
- Whereas the 1945 Constitution and the National Education System Law have stipulated the education budget of 20% of APBN/APBD but the increase of such budget does not benefit Teachers and Lecturers as the education components due to the provision of Article 49 Paragraph (1) of the National Education System Law that excludes "educators' salary" from the budget of 20% of APBN/APBD which continued in the 2007 APBN 2007, *vide* the 2007 APBN Law and this exclusion impairs the constitutional rights of the Petitioners as educators;
- Whereas the use of education cost nomenclature [*vide* Article 49 Paragraph (1) of the National Education System Law] is inappropriate and unconstitutional, because the education fund must be included in the education budget item of 20% of APBN/APBD according to Article 31 Paragraph (4) of the 1945 Constitution. Therefore, Article 49 Paragraph (1) of the National Education System Law concerned must be declared without legal binding effect. Thus, the term "fund" mentioned in Article 49

Paragraph (1) of the National Education System Law is **INCORRECT** because it is contradictory to the term used in Article 31 Paragraph (4) of the 1945 Constitution. Article 49 Paragraph (1) of the National Education System Law should have used the term “**BUDGET**” or “**BUDGETED**” in the context of Article 31 Paragraph (4) of the 1945 Constitution;

- Whereas the term “fund” in Article 49 of Paragraph (1) of the National Education System Law, shall be the salary of educators (including teachers and lecturers, *in casu* the Petitioners) which is incidental in nature, because it is not the part of APBN/APBD budget, so that it is contradictory to the “education budget” term mentioned in Article 31 Paragraph (4) of the 1945 Constitution;
- Whereas based on such description, it is evident that the provision of Article 49 Paragraph (1) of the National Education System Law is contradictory to Article 31 Paragraph (4) of the 1945 Constitution and harms the Petitioners in either **normative** or **material** respect;

[3.14] Considering whereas based on the foregoing description of the Petitioners’ petition and statement, the legal issue which must be considered by the court shall be whether Article 49 Paragraph (1) of the National Education System Law is truly contradictory to Article 31 Paragraph (4) of the 1945 Constitution, as argued by the Petitioners, so that it must be declared as having no binding legal effect;

[3.15] Considering whereas in considering the principal issue of the petition, besides having examined the documents/written evidence filed by the Petitioners, the Court also has heard the oral statements and/ or read the written statements of the experts presented by the Petitioners respectively named Prof. Dr. Arifin P. Soeria Atmadja, S.H., and Prof. Dr. Satya Arinanto, S.H., M.H., the Government's statement, the statement of DPR, and the statements of the Directly-Related Parties namely the Indonesian Teachers' Association (PGRI), Indonesian Education scholars' Association (ISPI), All-Indonesian Private Universities' Association (APTISI), as completely described in the facts of the case part, which are principally described as follows:

Statement of Expert Presented by Petitioner, Prof. Dr. Arifin P. Soeria Atmadja, S.H.,

- Whereas the terms *education budget* and *education fund* are different both in terms of content, and etymology. *Budget* or *begroting* is the term accepted by the public and has a standard definition, namely referring to state/regional revenues and expenditures plan for a period of one year in the form of revenues and expenditures as well as financing in the form of each revenue that must be repaid and/or expenditure that will be regained. Whereas the term *fund* shall be defined as the result of budget realization, so that it would be impossible for the fund to be disbursed prior to being budgeted first in the APBN/APBD. The fund derived from a budget item

shall be real and tentative and incidental in nature. Therefore, the education fund is incidental or tentative in nature, while in accordance with Article 31 Paragraph (4) of the 1945 Constitution it shall be referred to as **education budget** and not **education fund** as mentioned in Article 49 Paragraph (1) of the National Education System Law;

- Whereas since 1998, the education sector as set forth in Article 49 Paragraph (1) of the National Education System Law has not been used any longer as the basis for budget allocation of ministries/institutions/departments. The term currently used for the budget allocation shall be the part of budget consisting of organization unit and expenditure type. Therefore, the education budget shall be included in the budget part of the Department of National Education. This amendment is aimed at clarifying and avoiding duplication of budget function as well as identifying and measuring the performance of a department/ministry/institution, because if the sector is mentioned or further specified in sub-sector of education, the same sector or sub-sector shall also exist in other departments/ministries or institutions.
- Whereas with the exclusion of teacher's and lecturer's salary as set forth in Article 49 Paragraph (1) of the National Education System Law, it is clear that such article is not synchronous or contradictory to the other articles (*widersprüchlos*) in the same law, particularly Article 48

Paragraph (1) of the National Education System Law, requiring the education fund to be managed based on the principles of fairness, efficiency, transparency, and public accountability;

- Whereas the formulation of Article 49 Paragraph (1) of the National Education System Law seems to be inconsistent with the formulation of Article 1 Sub-Article 3 and Sub-Article 6 of the National Education System Law itself, that have placed teachers/lecturers not as the education components and by excluding their salary. Article 49 Paragraph (1) of the National Education System Law has also reduced the philosophical meaning implied in Article 31 Paragraph (4) of the 1945 Constitution, because it degrades the dignity and status of teachers/lecturers, by giving unfair treatment while excluding their salary from the education budget components. Therefore, it is clear that Article 49 Paragraph (1) of the National Education System Law is philosophically contradictory to the education philosophy implied in Article 31 Paragraph (4) of the 1945 Constitution;

Statement of Expert Presented by Petitioner, Prof. Dr. Satya Arinanto, S.H.,M.H.

- Whereas Article 49 Paragraph (1) of the National Education System Law is contradictory to Article 1 Sub-Article 3 of the National Education System Law itself, because the subject matter or substance of Article 1 Sub-Article

- 3 of the National Education System Law shall be to implement the delegation of regulation by law, especially in relation to the scope of the national education system, as mandated in Article 31 Paragraph (3) of the 1945 Constitution *juncto* Article 31 Paragraph (4) of the 1945 Constitution;
- Whereas with the existence of Article 49 Paragraph (1) of the National Education System Law which is aimed at excluding the educators' salary and official service education fund from the minimum allocation of 20% of APBN and 20% of APBD, the elements of educators' salary and official service education fund are negated by the definition of the phrase "national education system" as stated in Article 1 Sub-Article 3 of the National Education System Law;
 - Whereas based on the theoretical perspective regarding *legal drafting*, especially in relation to the choice of words in formulating laws and regulations, it can be stated that the formulation of Article 49 Paragraph (1) of the National Education System Law bears certain weaknesses. The weaknesses of such formulation is noticeable from the perspective of Law Number 10 Year 2004 regarding Formulation of Laws and Regulations. Other weaknesses are related to the use of the terms **fund** and **sector** as described in the statement of expert Prof. Dr. Arifin P. Soeria Atmadja, S.H., in the hearing on the December 12, 2007. Therefore, it can be said that the formulation of Article 49 Paragraph (1) of the National Education

System Law does not fulfill the basic principles of formulating laws and regulations. Therefore, such formulation must be improved, because the substance is not in accordance with the spirit of Article 31 Paragraph (3) of the 1945 Constitution *juncto* Article 31 Paragraph (4) of the 1945 Constitution;

- Whereas if the formulation of Article 49 Paragraph (1) of the National Education System Law shall remain applicable, it may hamper the noble and honorable objectives of business and the implementation of a national education system to develop the people's faith and devoutness as well as a noble character in the context of developing the intellectual life of the nation as mandated by the 1945 Constitution;

Statement of Government

Whereas there has been a normative ambiguity (dilemma) in understanding and describing the regulation regarding education, as provided for in the 1945 Constitution, namely as follows:

- Whereas every citizen shall have the right to obtain education [Article 31 Paragraph (1) of the 1945 Constitution], so that it is proper that every citizen is given the facilities and has the same right to obtain sufficient and qualified education;
- Whereas every citizen shall be obliged to follow basic education and

government shall be obliged to finance it [Article 31 Paragraph (2) of the 1945 Constitution]; this is related to the nine-year compulsory education program [*vide* Article 6 Paragraph (1), Article 17 and Article 34 of the National Education System Law].

- Whereas The government shall manage and organize one national educational system which enhances faith and devoutness as well as a noble character in the context of developing the intellectual life of the nation, and it shall be regulated by law [Article 31 Paragraph (3) of the 1945 Constitution]. With the definition of the context of managing and organizing a national education system, the President (the Government) together with the People's Legislative Assembly have issued the National Education System Law, which among other things regulates the education functions and objectives, and also the rights and obligations of every citizen and the government in organizing education, education type, compulsory education, education personnel, educational funding and education fund management, etc.. The last-mentioned matter has generated created ambiguous interpretations of the education budget.
- Whereas Article 31 Paragraph (3) of the 1945 Constitution mandates the formulation of a law regarding the Implementation of a National Education System, the substance of which must not imperatively regulate the education budget, because the education budget is

regulated in another paragraph namely in Article 31 Paragraph (4) of the 1945 Constitution. In other words, the regulation regarding the allocation and the amount of education budget shall be in the domain of the APBN Law stipulated every year.

- Therefore, it is appropriate the National Education System Law does not regulate definitely and limitatively the amount of education budget (using the term "education fund" in such Law), because the percentage of education budget is definitely and limitatively regulated in Article 31 Paragraph (4) of the 1945 Constitution.
- Whereas the state shall prioritize the minimum education budget of 20% of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget to meet the needs of implementing national education [Article 31 Paragraph (4) of the 1945 Constitution], and as the follow-up (its operational rules) to such provision, the APBN Law shall be enacted (with effective term of one year for each APBN law), that which is currently applicable (year 2007) is the 2007 APBN Law. Hence, the Law regarding State Revenues and Expenditures Budget shall regulate the education budget allocation in all activities which enhance faith and devoutness as well as a noble character in the context of developing the intellectual life of the nation, as regulated by law [Article 31 Paragraph (3) of the 1945 Constitution], with its management

being delegated to technical departments or institutions responsible for educational affairs in general

- Whereas based on the aforementioned description, the Government concludes that the provision of Article 31 Paragraph (3) of the 1945 constitution serves as the basis (domain) for the application of the National Education System Law which does not regulate or determine the amount of education budget allocation. Meanwhile the provision of Article 31 Paragraph (4) of the 1945 Constitution, regulating the percentage of education budget of 20% (twenty percent) of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget, shall become the operational basis (*domain*) of the APBN Law (the 2007 APBN Law).

Statement of the People's Legislative Assembly

- Whereas the education budget of 20% shall be to fulfill the rights of citizens to obtain education, develop science and technology to improve human prosperity and civilization. If the fund of 20% includes the educators' salary, the improved welfare expected by the Petitioners will become too difficult to realize, and the 20% figure will be meaningless for the regions;
- Whereas none of the Articles made by DPR together with Government shall harm the people, teachers, or lecturers. All factions existing in DPR together

with the Government always support the teachers and lecturers in order that none of the Indonesian citizens obtain unqualified education. All of them must be protected, all of them opt for the interest in quality;

- Whereas DPR expects that Article 49 Paragraph (1) of the National Education System Law to be maintained by interpreting the education fund as not being included in the domain of the National Education System Law. Article 49 of the National Education System Law is aimed at fulfilling the order of the 1945 Constitution. The Article 31 Paragraph (4) of the 1945 Constitution shall not explain in detail whatever is included in the 20% figure, so that the National Education System Law tries to detail it with a honorable objective of developing the intellectual life of the nation as stated in the preamble to the 1945 Constitution;

Statement of the Directly-Related Party, the Indonesian Teachers' Association

- Whereas the Petition for judicial review of the National Education System Law and the APBN Law of Budget Year 2007 so that they include the "element of teachers' and lecturers' salary and benefit" as the components in the provision of "budget allocation of 20% of APBN and APBD" is unreasonable and contradictory to the arguments of the Petitioners themselves, as they admit that all this time the provision of Article 31 Paragraph (4) of the 1945 Constitution that "The state shall prioritize the

- education budget by allocating at least twenty percent of the state revenues and expenditures budget and of the regional revenues and expenditures budget in order to meet the needs for organizing national education”.
- Whereas as the effort to provide the legal basis for the education implementation, the Government together with DPR have enacted the National Education System Law, Article 49 Paragraph (2) of which has stipulates that "The minimum allocation of education fund excluding educators' salary and official service education fund shall be 20% of APBN in the education sector and 20% of APBD."
 - Whereas by considering the provision of Article 31 Paragraph (4) of the 1945 Constitution and the provision of Article 49 Paragraph (2) of Law Number 20 Year 2003, the provision on the education budget allocation of 20% of APBN and APBD is imperative in nature. This means that non-compliance with the minimum education budget allocation of 20% of APBN and APBD shall be a violation of the 1945 Constitution.
 - Whereas the idea of including "teachers' and lecturers' salary and benefit" in the "minimum education budget allocation of 20% of APBN and 20% of APBD" would make it increasingly difficult for the government to carry out its constitutional responsibility of implementing Article 31 Paragraph (1), Paragraph (3), Paragraph (5) of the 1945;

- Based on all the foregoing considerations, PGRI requests the Constitutional Court as the guardian of the 1945 constitution, also in compliance with the provision of Article 31 Paragraph (4) of the 1945 Constitution, to reject the Petitioners' petition being examined currently;

Statement of the Directly Party, the Indonesian Education scholars' Association

- Whereas the exclusion of salary and benefit budget shall not mean that teachers are not a part of education development because there are many aspects of teachers' development namely, among other things, competence development, qualification development, etc. Basically, teacher will generally become a part of the overall education development;

Statement of the Directly Related Party, the All-Indonesian Private Universities' Association

- Whereas the commitment of Government in the education sector especially in the context of developing the nation's human resources and competitive edge to establish the national character and identity shall be realized and implemented in accordance with the mandate of the 1945 Constitution and the mandate of the National Education System Law particularly in relation to the education budget;

- Whereas the Government shall increase the education budget of 20% consistently and gradually with the increase of APBN with clear percentage, not in the form of Rupiah amount;
- Whereas the word exclusion should not appear in Article 49 of the National Education System Law and must be in line with Article 1 of the National Education System Law because educators are part of the national education system;

The Court's Opinion

[3.16] Considering whereas after minutely considering all the foregoing descriptions, the Court will state its opinion with respect to the principal issue of the petition, as follows:

[3.16.1] Whereas Article 31 Paragraph (4) of the 1945 Constitution states, *“the State shall prioritize the minimum education budget of 20% of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget to meet the needs of implementing national education”*.

With such formulation the 1945 Constitution shall not allow any interpretation other than the following:

- (a) that the state shall be responsible to prioritize the education budget in APBN and APBD;
- (b) that the intended priority shall be at least 20% of APBN and APBD;

[3.16.2] Whereas the amendment of budget allocation system in APBN has occurred, it no longer refers to the sector but function, so that the amount of education budget shall depend on the interpretation of the definition of education function and the budget allocated in the intended APBN.

[3.16.3] Whereas the terms education budget and education fund are different in terms of both their substance and their etymology. *Budget* or *begroting* are the terms already accepted by the public and have had a standard definition, namely state/regional revenues and expenditures plan in one-year period in the form of revenues and expenditures as well as financing in the form of revenues that must be repaid and/or expenditures that will be received. Meanwhile the fund is defined as the result of budget realization, so that it is impossible for the fund to be disbursed prior to being budgeted first in APBN/APBD.

[3.16.4] Whereas it is true that Article 31 Paragraph (4) of the 1945 Constitution does not explain in detail everything included in the scope of the education budget of twenty percent, but it can not be interpreted differently by Article 49 Paragraph (1) of the National Education System Law. The National Education System Law have decided in the General Provision of Article 1 Sub-Article 3 that national education system shall consist of all education components including the salary of educators. The formulation set forth in Article 49 Paragraph (1) of the National Education System Law has made a norm which is very different from the intention of Article 31 Paragraph (4) of the 1945 Constitution.

[3.16.5] Whereas regardless of all good intention as the background, the formulation of definition of Article 49 Paragraph (1) of the National Education System Law is inconsistent with the formulation of definition of Article 1 Sub-Article 3 and Sub-Article 6 of the National Education System Law itself, that reads as follows:

Article 1 Sub-Article 3, *“National Education System shall be the entire education components which are interrelated in an integrated manner to reach the goal of national education”*.

Article 1 Sub-Article 6, *“Educators shall be the education personnel who have qualifications as teachers, lecturers, learning tutors, widyaiswara, tutors, instructors, facilitators, and other titles in accordance with their specialization as well as those participating in implementing education”*.

Based on Article 1 Sub-Article 3 and 6, Article 49 Paragraph (1) of the National Education System Law have placed teachers and lecturers and excluded their salary as non education components. Besides, the formulation of Article 49 Paragraph (1) of the National Education System Law have reduced the philosophical meaning of Article 31 Paragraph (4) of the 1945 Constitution, that must not be implemented, considering that the 1945 Constitution is the highest norm for the nation and state.

Without any doubt of the goodwill of the Legislators who intended to encourage the education budget development, the intention should not have been formulated in such a way it includes the interpretation implying a denial of the nature of education with the exclusion of one of the main components in education namely educators.

[3.16.6] Whereas Article 31 Paragraph (3) of the 1945 Constitution mandates that the formulation of the law on the national education system organization should not bear the substance which imperatively regulate education budget because the education budget is regulated in another provision paragraph namely in Article 31 Paragraph (4) of the 1945 Constitution. In other words, the regulation regarding both allocation and the amount of education budget shall be within the domain of the APBN Law which is stipulated every year. Therefore, the National Education System Law shall not regulate the amount of education budget or, as mentioned in such law, “education fund” definitely and limitatively. The reason is that the amount of education budget percentage shall be stipulated in Article 31 Paragraph (4) of the 1945 Constitution, and shall be further definitively and limitatively regulated in the APBN Law which is stipulated every year.

[3.16.7] Whereas Article 31 Paragraph (1) of the 1945 states that the state shall prioritize the minimum education budget of 20% of the State Revenues and Expenditures Budget and Regional Revenues and Expenditures Budget to meet the needs for implementing national education system, and as the follow-up to or

operational rules of such provision, the APBN Law is enacted with one-year period of application . Therefore, the APBN Law regulates the education budget allocation in the form of all activities with the purpose of enhancing the people's faith and devoutness as well as a noble character in the context of developing the intellectual life of the nation [Article 31 Paragraph (3) of the 1945 Constitution], to the effect that its management is delegated to the technical departments or the institutions managing education in general;

[3.16.8] Whereas based on all the foregoing considerations, the court argues that the arguments of the Petitioners insofar as they are related to the phrase of "***educators' salary and***" in the provision of Article 49 Paragraph (1) of the National Education System Law are contradictory to Article 31 Paragraph (4) of the 1945 Constitution so that it is proper that the educators' salary must be fully considered in the preparation of education budget;

[3.16.9] Whereas with the inclusion of educators' salary component into the education budget calculation, it will become easier for the Government together with DPR to implement the obligation of fulfilling the minimum education budget of 20% (twenty percent) in APBN. If the educators' salary component was disbursed, the education budget in the 2007 APBN would be only 11.8%. Meanwhile by including the educators' salary component, the education budget in the 2007 APBN reaches 18%. Therefore, with the Court Decision, there are no more reasons to avoid or delay the compliance with the provision of the minimum

budget of 20% for education, both in APBN and APBD in every province, regency, and city throughout Indonesia in accordance with the provision of Article 31 Paragraph (4) of the 1945 Constitution. The Constitution shall be the highest law (*de hoogste wet*) and its implementation cannot be delayed, including regarding the provision of education budget of 20% in accordance with Court Decision Number 012/PUU-III/2005. Justice delayed is justice denied.

[3.16.10] Whereas therefore, in preparing of education budget, the salary of educators as a part of education components shall included in the APBN and APBD. If the educators' salary is not included in the education budget in the preparation of APBN and APBD and the education budget is less than 20% of APBN and APBD, the law and regulation related to the intended revenues and expenditures budget are contradictory to Article 31 Paragraph (4) of the 1945 Constitution;

[3.16.11] Whereas furthermore, in relation to the arguments of the Petitioners against the 2007 APBN Law, the Court is of the opinion that the APBN Law is characteristically different from laws in general, among other things as it is *eenmalig* in nature [*vide* Article 23 Paragraph (1) of the 1945 Constitution] which is applicable just for one year before it ends. Therefore, insofar as it is related to the 2007 APBN Law, the arguments of the Petitioners are not necessary to be further considered.

4. CONCLUSION

[4.1] Based on the all the foregoing description, the court concludes that:

[4.1.1] The Petitioners' petition with respect to Article 49 Paragraph (1) of the National Education System Law insofar it is related to the phrase of "**educators' salary and**" is sufficiently reasonable, hence it must be granted.

[4.1.2] The Petitioners' petition with respect to the 2007 APBN Law must be declared unacceptable (*niet ontvankelijk verklaard*);

5. RULINGS

In view of the provisions of Article 56 Paragraph (2) and Paragraph (3), as well as Article 57 Paragraph (1) and Paragraph (3) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316);

Passing the Decision:

To grant the Petitioners' petition partly;

To declare Article 49 Paragraph (1) of Law Number 20 Year 2003 regarding National Education System (State Gazette of the Republic of Indonesia Year 2003 Number 78, Supplement to the State Gazette of the Republic of Indonesia Number 4301) insofar as it is related to the phrase of "**educators'**

salary and” is contradictory to the 1945 Constitution of the State of the Republic of Indonesia;

To declare that Article 49 Paragraph (1) of Law Number 20 Year 2003 regarding National Education System (State Gazette of the Republic of Indonesia Year 2003 Number 78, Supplement to the State Gazette of the Republic of Indonesia Number 4301) insofar it is related to the phrase of “***educators’ salary and***” does not have any binding legal effect;

To declare the Petitioners’ petition against the 2007 APBN Law unacceptable (*niet ontvankelijk verklaard*);

To order the proper promulgation of this Decision in the Official Gazette of the Republic of Indonesia.

Hence this decision was passed in the Consultative Meeting of Justices attended by nine Constitutional Court Justices on Tuesday, February 12, 2008 and was pronounced in the Plenary Meeting of the Constitutional Court open for public held today, Wednesday, February 20, 2008, by us Jimly Asshiddiqie, as the Chairperson and concurrent Member, H.A.S. Natabaya, H.M. Laica Marzuki, Soedarsono, I Dewa Gede Palguna, Maruarar Siahaan, H.A. Mukthie Fadjar, and H. Achmad Roestandi, respectively as Members, assisted by Ida Ria Tambunan as the Substitute Registrar, as well as in the presence of the Petitioners/their Attorneys, and the People’s Legislative Assembly or its representative, the

Government or its representative as well as the Directly Related Parties;

CHIEF JUSTICE,

SGD

Jimly Asshiddiqie

JUSTICES

SGD

H.A.S Natabaya

SGD

H.M. Laica Marzuki

SGD

Soedarsono

SGD

I Dewa Gede Palguna

SGD

Maruarar Siahaan

SGD

H.A. Mukhtie Fadjar

SGD

H. Achmad Roestandi

6. DISSENTING OPINIONS

With regard to the foregoing Court Decision, three Constitutional Justices, namely **H. Abdul Mukhtie Fadjar, Maruarar Siahaan, and H. Harjono**, expressed dissenting opinions as follows:

[6.1] Constitutional Court Justice H. Abdul Mukthie Fadjar

“Teachers who are disinterested with teachers’ destiny”

1. I wonder what on earth has made the two teachers file a petition for judicial review of Article 49 Paragraph (1) of Law Number 20 Year 2003 regarding National Education System (the National Education System Law) that reads, “The minimum allocation of education fund excluding educators’ salary and official service education fund shall be 20% of APBN in the education sector and 20% of APBD” deemed contradictory to the 1945 Constitution. The petitioners argue that the provision has exclude education as the main component of education, so that it will impair their constitutional rights as educators, by lowering their salary and prosperity.
2. Whereas, the provision of Article 49 Paragraph (1) of the National Education System Law is not concerned with education components, as no one would deny that educators are one of the national education system components, but the *a quo* provision only discusses the matter of education fund allocation with respect to which teachers’ and lecturers’ (educators) salary is in fact not included, because the salary of teachers and lecturers appointed by the Government (Civil servant) like the civil servants in general, is regulated separately in the Regulation of Civil

Servants' Salary (PGPS) and also included in RAPBN [*vide* Article 49 Paragraph (2) of the National Education System Law].

3. Whereas if the educators' salary is included in the education fund allocation as intended in Article 49 Paragraph (1) of the National Education System Law, it would be impossible for the state through APBN and APBD to bear the entire salary of the educators, both civil servant and non-civil servant.. Based on Law Number 14 Year 2005 regarding Teachers and Lecturers, the salary of educators in educational institutions established by the society concerned shall be paid by the relevant educational institutions, not from APBN and/or APBD.
4. Whereas based on the statement of the legislators, namely DPR and the Government (before the orientation changes, because there are two different opinions conveyed in the court), Article 49 Paragraph (1) of the National Education System Law has been in fact formulated as the policy regulating that the fund provided to implement education (including for various benefits for teachers and lecturers regulated in the Law on Teachers and Lecturers) will be higher if the component of educators' salary and the official service education fund are not included. This does not mean that the educators are excluded as the component of education, as interpreted by the Petitioners and also by the majority opinion.

5. Whereas if the legal considerations of the previous Court Decisions regarding APBN Laws are carefully considered, the matter of educators' salary which is not included into the minimum education fund/budget of 20% reflected in RAPBN and RAPBD is the policy choice and depends on the agreement between DPR and the Government which is equally constitutional. Hence, for the sake of decision consistency, the Court should have been consistent with the point of view that whatever is formulated in Article 49 Paragraph (1) of the National Education System Law shall be equally constitutional just like when at particular moment the "*legal policy*" will include the component of educators' salary into the fund allocation for education sector.
6. The Petitioners are not harmed at all by the coming into effect of Article 49 Paragraph (1) of the National Education System Law, even conceptionally they have benefited and they must be grateful to the legislators who conceptionally have allocated the minimum education fund of 20% in APBN and APBD excluding educators' salary and official service education fund which are separately provided in APBN.
7. Unfortunately the Petitioners do not understand the goodwill of the legislators and by filing the petition for judicial review of Article 49 Paragraph (1) of the National Education System Law, as teachers they have harmed the teachers' destiny, and it is ironic that the majority has

granted such petition. It means that this has been a “*set back*” from the previous decisions.

8. Whereas the granting of this petition with the excuse of implementing the provision of Article 31 Paragraph (4) of the 1945 Constitution (*note*: indeed if the salary of educators of civil servant is included, it must be easier for the provision to be complied with, because currently the budget is about 18–19% of APBN), is really a misleading constitutional “stratagem”. Thus, educators should be prepared to shed tears and the “*Himne Guru* [Teachers’ Hymn]” song will be sung just to stir the emotion.
9. Therefore, the Court must reject the Petitioners’ petition, or at least declare that the petition is unacceptable (*niet ontvankelijk verklaard*), because there is no constitutional right of the Petitioners which is impaired by the coming into effect of Article 49 Paragraph (1) of the National Education System Law.

[6.2] Constitutional Justice Maruarar Siahaan and Constitutional Justice H. Harjono

The Court should have expressly rejected the Petitioners’ petition, because it is not in any way related to the issue constitutionality of norms petitioned with the following reasons:

1. System is a group of units combined to form a unity and working together, or functioning entire body. The elements of a system and the interaction among them are abstract and concrete in nature. However, the distinguishing characteristic of a system is the concept that treats an issue as a whole not partly, as in the traditional specialization approach to problem solving. These characteristics need the consideration of all main variables and their interaction. Usually in this way, it is possible to reach comprehensively better solution to avoid the unexpected and destructive impacts. The society's demand for effective solution for the complicated problem concerning education and budget is increasingly important because of the disparity among the sectors in APBN viewed in equal position, without placing them a scale of priority, hence it cannot give a good understanding wished by the constitution.

2. It is not allowed to interpret the meaning of "education system" without formulating the problems faced internal atmosphere experienced by the drafters of the amendment to the 1945 Constitution; the nation's lag in intelligence level that created an objective of the establishment of the State of the Republic of Indonesia, so that after identifying the system components and interrelation among the components, the way to reach the objective will be formulated, *in casu* in implementing the constitutional obligation of Government to develop the intellectual life of the nation by using the strategy of separating "*the educators' salary and official service*

- education fund*” from the education budget in APBN and APBD as provided for in Article 49 Paragraph (1) of the National Education System Law. This regulation is not related to the assumption as if in the National Education System Law, teachers as the one of the national education system components is not recognized. The national education system is a subsystem in the state administration system, in which teachers are also included as a part of civil servants (PNS) as regulated in a similar system of employment and salary payment, placed in APBN. Hence, the understanding of the national education system cannot be separated from the comprehensive understanding of state administration system as an official organization.
3. As a strategy or policy to reach the objective formulated in the constitution to increase the fund or budget for education, the provision of Article 49 Paragraph (1) of the National Education System Law, which is the agreement of DPR and Government in the form of Law, does not bear any contradiction to Article 31 Paragraph (3) of the 1945 Constitution, and there is no problem of norm constitutionality, although from the definition aspect, the definition of “*education fund*” and “*education budget*” may be interpreted differently. However, it is not in any way related to the norm constitutionality of such article against Article 31 Paragraph (3) of the 1945 Constitution as argued, and the justification of textual interpretation by the experts presented by the Petitioners will seem weak and

ensorious in finding loopholes among the words or letters of Article 49 Paragraph (1) of the National Education System Law, whereas it has been a fact, as stated by DPR, that the National Education System Law tries to explain in detail the education budget with a honorable objective of developing the intellectual life of the nation as mentioned in the preamble to the 1945 Constitution.

4. The result of judicial review of Article 49 Paragraph (1) of the National Education System Law which may cause the teachers' salary to be calculated in the formulation of education budget of 20%, although it is not directly related to the Court Decision Number 026/PUU-IV/2006 regarding Education Budget, but it has a direct effect to the Court's interpretation of the constitutional mandate in the education sector, which have been included in the previous decisions. Therefore, although the judicial review of Article 49 Paragraph (1) of the National Education System Law against Article 31 Paragraph (3) of the 1945 Constitution, basically such decision brings the impact on the impression of a premature change in attitude, because in a short time and in a changing condition where the education improvement wished by the constitution has not been significant, the decision in the *a quo* case directly changes the formula for the calculation of education budget used in the previous Decisions of the Court.

5. Despite the concern that the continuous violations of the Constitution by the Government by not implementing the Court Decision and Article 31 Paragraph (4) of the 1945 Constitution can *delegitimate* the 1945 Constitution and the Court's prestige, in the condition where there is no instrument to force the implementation of such decision as well as in the global and national economic condition, sufficient time and endurance are needed to shape the awareness of state administrators that the constitutional obligations related to the relative amount of budget allocation, is not an impossible matter. The Decision of the US Supreme Court in *Brown v. Board of education of 1954*, needed 10 years before it was implemented effectively. (Laurence Baum: 2002) However, during the long period when the decision was not implemented, even with clear resistance from some states who did not want to comply with it, supported by the congress members from the southern states of the US, the Supreme Court did not change its stand in relation to such noble and honorable duty, based on its faith in the truth of the constitution they have.
6. It cannot be denied that the APBN prepared year by year does not show maximum effort of the Government to effectively implement the constitutional mandate, and hence the Court Decision in this case will weaken the force of the constitutional mandate in Article 31 Paragraph (4) of the 1945 Constitution and the previous Court Decisions. This should not have happened, because in our opinion, Article 49 Paragraph (1) of the

National Education System Law does not have any problem of constitutionality, and without the coercive instrument to implement the Court Decision, thus only a people's "referendum" in a five-year circle of general elections be entitled to change and confirm the truth of the Court decision and the Court's belief in the noble and honorable aim of education budget with the formulation of Article 49 Paragraph (1) of the National Education System Law, which will determine whether the constituents will accept the Government which avoids the implementation of the constitutional mandate and Court Decisions. At the time the Court would adjust its opinion that had been tested in such referendum, with the public will that would be the valid interpretation of Article 31 Paragraph (3) and Paragraph (4) of the 1945 Constitution.

7. Hence, the Court should have only delegated to the Government and DPR, whether to revise Article 49 Paragraph (1) of the National Education System Law as a part of its policy or not, and **not to review and declare** that Article 49 Paragraph (1) of the National Education System Law insofar as it contains the phrase "*educators' salary and*" has excluded educators' salary from the education budget in APBN and that it is contradictory to the 1945 Constitution (**unconstitutional**), and that it has no binding legal effect.

SUBSTITUTE REGISTRAR

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SGD

Ida Ria Tambunan